

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION**

**CARDELL TOLIVER, IN HIS
REPRESENTATIVE CAPACITY,
ON BEHALF OF ALL WRONGFUL
DEATH BENEFICIARIES OF
CORNELIUS TOLIVER**

PLAINTIFF

VERSUS

CIVIL ACTION NO. 4:03CV11-P-B

**NATIONAL HERITAGE REALTY, INC.,
D/B/A GREENWOOD HEALTH AND
REHABILITATION CENTER; AND JOHN
AND JANE DOES 1-10**

DEFENDANTS

ORDER

This cause is before the Court on the defendant's Motion in Limine to Exclude Evidence or Testimony of Incidents Occurring Subsequent to Cornelius Toliver's Residency at Greenwood Health and Rehabilitation Center [161]. The Court, having reviewed the motion, the response, the authorities cited and being otherwise fully advised in the premises, finds as follows, to-wit:

That the motion is duplicative of subparagraph 7 of the defendant's omnibus motion. As a further matter, the Court finds defendant's alternative argument that the evidence sought to be excluded is inadmissible evidence of character under F.R.E. 404(b) unpersuasive. As pointed out by plaintiff, F.R.E. 404(b) permits proof of other incidents as proof "of motive, opportunity, preparation, plan, knowledge, identity, or absence of mistake or accident." F.R.E. 404(b) (emphasis added). Evidence of subsequent incidents, if offered under the alternative admissibility criteria of F.R.E. 404(b), is both relevant and admissible.

IT IS, THEREFORE, ORDERED AND ADJUDGED that the defendant's Motion in Limine to Exclude Evidence or Testimony of Incidents Occurring Subsequent to Cornelius Toliver's Residency at Greenwood Health and Rehabilitation Center [161] is not well-taken and should be, and hereby is, DENIED.

SO ORDERED, this the 27th day of February, 2006.

/s/ W. Allen Pepper, Jr.
W. ALLEN PEPPER, JR.
UNITED STATES DISTRICT JUDGE